

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID LYNN SOMERS
7545 Sunset Road
Joshua Tree, CA 92252

Registered Nurse License No. **271793**

Respondent

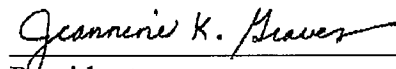
Case No. 2011-559

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on **March 22, 2011.**

IT IS SO ORDERED **March 22, 2011.**



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2011-559

13 **DAVID LYNN SOMERS**
14 **7545 Sunset Road**
15 **Joshua Tree, CA 92252**
16 **Registered Nurse License No. 271793**

17 **STIPULATED SURRENDER OF**
18 **LICENSE AND ORDER**

19 Respondent.

20 In the interest of a prompt and speedy resolution of this matter, consistent with the public
21 interest and the responsibility of the Board of Registered Nursing of the Department of Consumer
22 Affairs the parties hereby agree to the following Stipulated Surrender of License and Order which
23 will be submitted to the Board for approval and adoption as the final disposition of the
24 Accusation.

25 PARTIES

26 1. Louise R. Bailey, M.Ed., RN ("Complainant") is the Executive Officer of the Board
27 of Registered Nursing. She brought this action solely in her official capacity and is represented in
28 this matter by Kamala D. Harris, Attorney General of the State of California, by Randy M.
Mailman, Deputy Attorney General.

2. David Lynn Somers is representing himself in this proceeding and has chosen not to
exercise his right to be represented by counsel.

3. On or about August 31, 1976, the Board of Registered Nursing issued Registered
Nurse License No. 271793 to David Lynn Somers ("Respondent"). The Registered Nurse

1 License was in full force and effect at all times relevant to the charges brought in Accusation No.
2 2011-559 and will expire on July 31, 2012, unless renewed.

3 JURISDICTION

4 4. Accusation No. 2011-559 was filed before the Board of Registered Nursing,
5 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
6 and all other statutorily required documents were properly served on Respondent on December
7 22, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
8 Accusation No. 2011-559 is attached as Exhibit A and incorporated by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations in
11 Accusation No. 2011-559. Respondent also has carefully read, and understands the effects of this
12 Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of his legal rights in this matter, including the right to a
14 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
15 his own expense; the right to confront and cross-examine the witnesses against him; the right to
16 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
17 the attendance of witnesses and the production of documents; the right to reconsideration and
18 court review of an adverse decision; and all other rights accorded by the California
19 Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
21 every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in Accusation
24 No. 2011-559, agrees that cause exists for discipline and hereby surrenders his Registered Nurse
25 License No. 271793 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation he enables the Board to issue
27 an order accepting the surrender of his Registered Nurse License without further process.
28

CONTINGENCY

10. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Surrender of License and Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Surrender of License and Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 271793, issued to Respondent David Lynn Somers, is surrendered and accepted by the Board of Registered Nursing.

1. The surrender of Respondent's Registered Nurse License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent.

1 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
2 license history with the Board.

3 ~~2. Respondent shall lose all rights and privileges as a registered nurse in California as of~~
4 ~~the effective date of the Board's Decision and Order.~~

5 3. Respondent shall cause to be delivered to the Board his wall license certificate if one
6 was issued, and his pocket license on or before the effective date of the Decision and Order.

7 4. If Respondent ever files an application for licensure or a petition for reinstatement in
8 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
9 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
10 effect at the time the petition is filed, and all of the charges and allegations contained in
11 Accusation No. 2011-559 shall be deemed to be true, correct and admitted by Respondent when
12 the Board determines whether to grant or deny the petition.

13 5. If Respondent should ever apply or reapply for a new license or certification, or
14 petition for reinstatement of a license, by any other health care licensing agency in the State of
15 California, all of the charges and allegations contained in Accusation, No. 2011-559 shall be
16 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
17 Issues or any other proceeding seeking to deny or restrict licensure.

18 6. Respondent shall not apply for licensure or petition for reinstatement for two (2)
19 years from the effective date of the Board of Registered Nursing's Decision and Order.

20 7. Pursuant to Business and Professions Code section 125.3, Respondent shall pay the
21 Board its costs of investigation and enforcement in the amount of \$545.00 prior to issuance of a
22 new or reinstated license.

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24 ///

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27 ///

28 ///

ACCEPTANCE

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED:

1/20/2011

David Lynn Somers
DAVID LYNN SOMERS
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

Dated: January 4, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
KAREN B. CHAPPELLE
Supervising Deputy Attorney General

Randy M. Mailman
RANDY M. MAILMAN
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 2011-559

1 EDMUND G. BROWN JR.
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15 **Joshua Tree, CA 92252**
16 **Registered Nurse License No. 271793**

A C C U S A T I O N

Respondent.

17 Complainant alleges:

PARTIES

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
20 Consumer Affairs.

21 2. On or about August 31, 1976, the Board of Registered Nursing issued Registered
22 Nurse License Number 271793 to David Lynn Somers ("Respondent"). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on July 31, 2012, unless renewed.

JURISDICTION

25 3. This Accusation is brought before the Board of Registered Nursing ("Board"), under
26 the authority of the following laws. All section references are to the Business and Professions
27 Code ("Code") unless otherwise indicated.
28

1
2 **STATUTORY PROVISIONS**

3 4. Section 118, subdivision (b) of the Code provides: "The suspension, expiration, or
4 forfeiture by operation of law of a license issued by a board in the department, or its suspension,
5 forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender
6 without the written consent of the board, shall not, during any period in which it may be renewed,
7 restored, reissued, or reinstated, deprive the board of its authority to institute or continue a
8 disciplinary proceeding against the licensee upon any ground provided by law or to enter an order
9 suspending or revoking the license or otherwise taking disciplinary action against the licensee on
10 any such ground."

11 5. Section 490 of the Code provides:

12 "(a) In addition to any other action that a board is permitted to take against a licensee, a
13 board may suspend or revoke a license on the ground that the licensee has been convicted of a
14 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
15 or profession for which the license was issued.

16 (b) Notwithstanding any other provision of law, a board may exercise any authority to
17 discipline a licensee for conviction of a crime that is independent of the authority granted under
18 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
19 of the business or profession for which the licensee's license was issued.

20 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
21 conviction following a plea of nolo contendere. Any action that a board is permitted to take
22 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
23 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
24 made suspending the imposition of sentence, irrespective of a subsequent order under the
25 provisions of Section 1203.4 of the Penal Code."

26 6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline
27 any licensee, including a licensee holding a temporary or an inactive license, for any reason
28 provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

1 7. Section 2761 of the Code provides, in pertinent part:

2 “The board may take disciplinary action against a certified or licensed nurse or deny an
3 application for a certificate or license for any of the following:

4 (a) Unprofessional conduct, which includes, but is not limited to, the following:

5

6 (f) Conviction of a felony or of any offense substantially related to the qualifications,
7 functions, and duties of a registered nurse, in which event the record of the conviction shall be
8 conclusive evidence thereof.”

9 8. Section 2762 of the Code provides, in pertinent part,

10 “In addition to other acts constituting unprofessional conduct within the meaning of this
11 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
12 following:

13 . . .

14 (b) Use any controlled substance as defined in Division 10 (commencing with Section
15 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
16 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
17 himself or herself, any other person, or the public or to the extent that such use impairs his or her
18 ability to conduct with safety to the public the practice authorized by his or her license...”

19 9. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
20 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
21 licensee or to render a decision imposing discipline on the license.

22 **REGULATORY PROVISIONS**

23 10. California Code of Regulations, title 16, section 1444, provides:

24 “A conviction or act shall be considered to be substantially related to the qualifications,
25 functions or duties of a registered nurse if to a substantial degree it evidences the present or
26 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
27 safety, or welfare.

28 Such convictions or acts shall include but not be limited to the following:

1 (a) Assaultive or abusive conduct including, but not limited to, those violations listed in
2 subdivision (d) of Penal Code Section 11160.

3 (b) Failure to comply with any mandatory reporting requirements.

4 (c) Theft, dishonesty, fraud, or deceit.

5 (d) Any conviction or act subject to an order of registration pursuant to Section 290 of
6 the Penal Code.”

7 COST RECOVERY

8 11. Section 125.3 provides, in pertinent part, that the Board may request the
9 administrative law judge to direct a licentiate found to have committed a violation or violations of
10 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
11 enforcement of the case.

12 FIRST CAUSE FOR DISCIPLINE

13 (Conviction for a Substantially-Related Crime)

14 12. Respondent is subject to disciplinary action under section 2761, subdivision (f) and
15 section 490 of the Code, as defined in California Code of Regulations, title 16, section 1444, in
16 that on or about September 21, 2009, in the criminal matter entitled *People v. David Lynn*
17 *Somers*, (San Bernardino Super. Ct. 2009, Case No. FMB 900277), Respondent entered a plea of
18 guilty to a misdemeanor violation of California Penal Code section 594 (b)(2)(A), vandalism.
19 Respondent was placed on a grant of summary probation for a period of five years. As conditions
20 of probation, Respondent was ordered to pay fines, attend a fifty-two week domestic violence
21 education course, and stay away from the victim. The basis for the conviction is that on or about
22 June 10, 2009, after an argument, Respondent’s wife attempted to leave their home by vehicle
23 and Respondent shot bullets from a firearm into the tires of his wife’s vehicle. Respondent’s
24 blood alcohol level at the time of the offense was .217%.

25 SECOND CAUSE FOR DISCIPLINE

26 (Dangerous Use of Alcohol)

27 13. Respondent is subject to disciplinary action under section 2762, subdivision (b) of the
28 Code, in that Respondent used alcohol to an extent or in a manner dangerous or injurious to

